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Supreme Court of the United States

October Term, 1973
No. 73-423

PENN CENTRAL TRANSPORTATION COMPANY,
Petitioner,

vs.

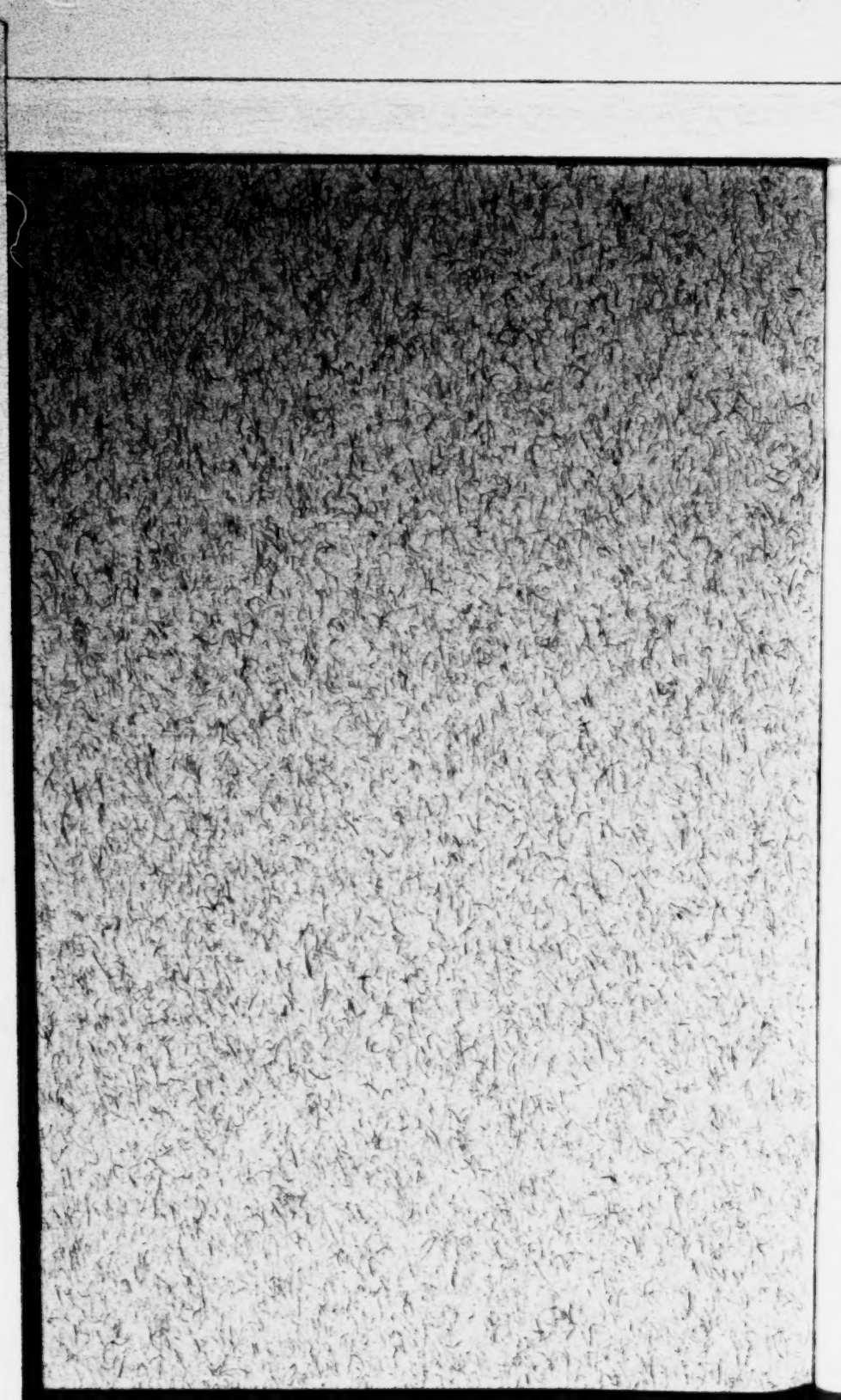
LEONARD L. EDSALL,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

JOHN RUFFALO
510 Mahoning Bank Building
Youngstown, Ohio 44503
Attorney for Respondent

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO – TEL. (216) 621-5647



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Supreme Court of the United States

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PENN CENTRAL TRANSPORTATION COMPANY,
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LEONARD L. EDSALL,
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ON PETITION FOR WRIT OF CERTIORARI TO THE
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BRIEF OF RESPONDENT IN OPPOSITION

THE STATEMENT OF THE CASE

The proceedings in review stem from an Order entered by the Trial Court in directing replacement of Respondent's counsel if unable to proceed with trial by September 5, 1972 because of illness (a diagnosed malignant tumor or growth) and the further Order of the Court dismissing said cause without prejudice for the want of prosecution (Pet. 16 a) when counsel for Respondent was unable to attend trial because of said illness.

Fact Basis of the Claims

Leonard L. Edsall, a conductor, employed by the Penn Central Transportation Company, in his Complaint alleged two causes of action for personal injuries which occurred on or about the 15th day of November, 1968 and on or about the 21st day of September, 1969 under the Federal Employers' Liability Act (45 U.S.C.A. 51 *et seq.*).

The injury of the 15th day of November to his back, shoulders and arms occurred when he stumbled and fell over a lump of coke and other debris lying within a walkway as he was assisting in coupling cars and assembling a train.

The injury of September 21, 1969 happened while Respondent was at a lodging provided by the railroad in a depressed area of the city when he and members of the crew went to a diner to have breakfast preparatory to a call of duty at 1:00 o'clock A. M. Respondent on returning from the diner at about 12:30 A. M. was struck on the head by an unknown assailant as he entered the Y.M.C.A. and sustained a concussion of the brain, laceration of the scalp which bled profusely and a severe heart attack.

Progress of the Proceedings

Respondent filed his FELA claims on the 25th day of June, 1970. Interrogatories were propounded and Answers of the Petitioner to Interrogatories were filed on October 1, 1971. A Pre-trial Conference was ordered for July 5, 1972 with a trial date of July 10, 1972. Respondent informed the Court that Petitioner had failed to answer certain Interrogatories and had likewise failed to produce documents in compliance with the Federal Court Rules.

The Court ordered Petitioner to answer the Interrogatories, produce the documents requested and set the trial date for July 27, 1972. In its order the Court directed that Petitioner respond to the Interrogatories, and the request for discovery by July 10, 1972, prior to Petitioner's taking of the deposition of the Respondent on July 13, 1972 which deposition was requested at pre-trial (Pet. 15 a).

Respondent on July 10, 1972 did not receive the answers to the interrogatories nor did he receive the items which were to be produced by the Petitioner as ordered by the Court. Petitioner, however, on July 11, 1972 propounded Interrogatories to the Respondent. Respondent on July 13, 1972 appeared for the deposition and after the deposition was under way Petitioner produced some of the documents for the purpose of impeaching the Respondent. Respondent objected to the production and use of the documents as not being in accord with the Court's Order of July 5, 1972 (Pet. 15 a).

Petitioner on July 19, 1972 filed a Motion For Production of Documents and a Protective Order seeking to extend the trial date of July 27, 1972 in order to obtain several hospital records of the Respondent including his Naval Service records from the General Service Administration, St. Louis, Missouri which required three months time, being received on October 24, 1972.

Respondent's counsel on July 20, 1972 unaware of Petitioner's Motion to extend the trial date directed a letter to the Court advising it of his illness and inability to meet the trial date (Pet. 11 a).

The Court on July 21, 1972 sustained the Motion of Petitioner for Production of Documents and Protective Order (Pet. 16 a). The Court further stating it appears

that John Ruffalo, Sr., is physically incapacitated and the trial date would be continued until September 5, 1972, that no additional continuances would be granted and in the event John Ruffalo, Sr.* was unable to proceed by September 5, 1972 replacement counsel would be ordered (Pet. 16 a).

The ruling and order of the Court respecting the Motion For Production of Documents, the Protective Order and the replacement of Respondent's counsel was docketed on July 24, 1972 (p. 18, *infra*) and the Order was received by Respondent on July 25, 1972. On July 25, 1972 previous to the receipt of the Court's Order sustaining Petitioner's Motion For Production and Protective Order and directing of replacement of counsel, Respondent filed a Brief in Opposition to Petitioner's Motion For Production (p. 18, *infra*). Since Respondent had not been afforded the prescribed ten (10) days under the local rule 2 (a) (3) in which to file his Brief in Opposition to the Motion of the Petitioner, Respondent on July 28, 1972 filed a Motion for Reconsideration and to Vacate the Order of July 21, 1972 (p. 19, *infra*).

On August 18, 1972 the Court summarily overruled Respondent's Motion to Reconsider and Vacate the July 21st Order respecting Production of records, Replacement of Counsel and the setting of the trial date as being without merit (p. 19, *infra*) and created as the Order now stood a contradiction of orders incompatible with the trial date of September 5, 1972 for the time needed to procure the hospital records under the Order of July 21, 1972 would take at least three months.

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*(John Ruffalo, Sr., is deceased; John Ruffalo, Jr., is sole counsel.)

On August 29, 1972, Respondent timely filed a Notice of Appeal from the Final Order of the Trial Court ordering replacement of counsel, the setting of the trial date and the production of records. Service of the Notice of Appeal was made upon Petitioner on the 29th. Again, on October 6, 1972 he timely filed a Notice of Appeal from the Trial Court's Final Order of September 6, 1972 dismissing said causes without prejudice and for want of prosecution and from the previous Order of July 21, 1972 (docketed July 24, 1972) as to the replacement of counsel (p. 19, *infra*).

Facts Relevant to Dismissal

Petitioner states that the Deputy Clerk of the Trial Court on August 31, 1972 notified Respondent and his counsel by certified mail of the trial date of September 5, 1972, which notices were receipted for on September 2, 1972. However, prior to the receipt of the notices, Respondent's counsel on September 1, 1972 called the Trial Court and spoke to the Deputy Clerk when he was unable to speak to the Trial Court and related to the Clerk that he was not physically able to appear for the trial.

Counsel unable to speak to the Trial Court immediately thereafter contacted the Chief Judge to explain that he was unable to advise the Trial Court that he was not physically and mentally capable of trying the case on September 5, 1972 and asked if he could contact the Trial Court and explain that counsel was seeking a continuance because of his illness. Later that same day, September 1, 1972, he contacted the Chief Judge and was advised that the case would be dismissed *and that Respondent need not appear.*

Respondent was ready and prepared to try the case on July 10, 1972 as originally ordered and so informed

the Court at pre-trial. The dilatory pleading of the Petitioner delayed the proceedings to and beyond the trial date of July 27, 1972. Respondent had nothing to do with prolonging the day of trial for over two years. Counsel's illness affected the trial date only after the expiration of two years and played a small but excusable part in any protraction of the trial day.

Respondent says that counsel had been restricted in his work activities by his physician for a period of at least thirty (30) days or more depending upon the results of tests and examinations which were being made respecting the state of his health (p. 20, *infra;* Pet. 11 a). That the Court had been advised as to the limitations upon his activities and informed "that as soon as my physician advises me that I can return to active duty, I will notify you" (Pet. 11 a).

Respondent says that counsel was undergoing certain examinations by his physicians, Dr. John N. McCann and Dr. C. Edward Pichette, as to the malignancy of a tumor or growth in his body. Respondent says that at the conclusion of these examinations counsel entered the University Hospital in Cleveland, Ohio on October 29, 1972 under the care of Dr. Lester Persky (specialist in Cancer) for the surgical removal of a suspected malignant tumor or growth, was discharged from the hospital on November 7, 1972 and confined to his home until November 27, 1972 (p. 21, *infra*).

Respondent says that counsel was not physically or mentally capable of trying the case under the conditions of his health and that his counsel informed the Trial Court, other District Judges (District Judge Contie continued eight (8) cases for Counsel) and Chief Judge of the District Court, Northern District of Ohio, Eastern Division, by letters similar in content dated July 20, 1972 (p. 20,

infra; Pet. 11 a), on subsequent occasions in person and by telephone on Sept. 1, 1972 prior to the date of trial of Respondent's case.

The order of dismissal of September 6, 1972 precluded Respondent from refiling his complaint since the three year statute of limitations had run against the claim of November 15, 1968. This 1968 claim was equally as important as the claim of September 21, 1969. A dismissal whether with or without prejudice would not have altered the drastic consequences in which Respondent was placed by the order of dismissal.

> "Title 45 U.S.C.A. § 56. No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued."

Respondent diligently tried to retain other counsel in accordance with the Trial Court order but was unable to do so until October 1, 1972. Other counsel would only aid to preserve the claim if it could be refiled at Youngstown, Ohio. Other counsel on October 6, 1972 filed a claim in the Common Pleas Court of Mahoning County, Ohio (Case No. 72 CI 1522) pleading the saving clause. The case is presently pending in that Court.

Finding of Appeals Court

On appeal, the Sixth Circuit Court on the 22nd day of May, 1973 found that the Trial Court committed an abuse of discretion in dismissing the case and reversed because the balancing of the equities in the interests of the employee outweighs the interests of the railroad and the concern of the Court for its calendar (Pet. 12 a).

Petitioner duly filed a Petition for Rehearing and the Circuit Court on June 7, 1973 denied the petition on the

ground that although it appears therefrom that plaintiff-appellant had been advised of the trial date, it does not appear that he had been told that no continuance would be permitted (Pet. 14 a).

LAW AND ARGUMENT

No Basis for Review is Shown

The Writ should be denied:

1. Grant of review would be contrary to the established rule of the Court that such writs are impermissible when there is no conflict in the application of the law as between the different Courts of Appeals. *Layne & Bowler v. Western Well Works, Inc.*, 261 U.S. 387, 392-393, 67 L. Ed. 713, 714; *S. S. Monrosa v. Carbon Black Export Inc.*, 359 U.S. 180, 184, 3 L. Ed. 2d 723, 726.

2. The challenged judgment rests upon its own independent facts and the application of the law to those facts which are completely different from the facts of the decisions relied upon by the Petitioner as being in conflict with other Appellate Courts. *Wisconsin Electric Company v. Dunmore Company*, 282 U.S. 813, 75 L. Ed. 728.

Decisions Relied Upon by the Petitioner Do Not Support its Reasons for Granting the Writ

In *Link v. Wabash R. R. Company*, 370 U.S. 626, 8 L. Ed. 2d 734, reh. den. 371 U.S. 873, 9 L. Ed. 2d 112 (1962), plaintiff commenced action on August 24, 1954 and defendant answered on April 30, 1955. Case was set for hearing on July 17, 1957 and on Motion of plaintiff it was vacated. On Aug. 17, 1957 defendant filed Interroga-

tories. On Feb. 24, 1959, notice was given pursuant to Local Rule that the cause would be dismissed on March 25, 1959 unless the Court ordered otherwise. On March 24, 1959 plaintiff answered defendant's Interrogatories. The hearing was had under Rule to dismiss and on June 4, 1959 the Court ordered the case retained on the docket. Case set for trial on July 22, 1959 but defendant had trial date vacated. On March 11, 1960 defendant filed additional Interrogatories and plaintiff answered them. On Sept. 29, 1960 Notice of Pre-trial was sent to counsel for Oct. 12, 1960 at 1:00 P.M. On Oct. 12, plaintiff's counsel called the Court House and stated that he was preparing papers for the State Supreme Court but was not appearing before that court and could not be in Federal Court in Hammond by 1:00 o'clock.

Not so in the instant case, Respondent, Edsall, had not delayed the case or been dilatory in any of the proceedings. The delays and dilatoriness were all occasioned by the Petitioner, Penn-Central. Edsall's inability to have the case tried was the result of matters beyond his control, illness of counsel.

Unlike the *Link* case, the Edsall case was not on any call calendar for dismissal but was suddenly called for pre-trial and trial. It was not the oldest case on the docket as in *Link* (6 years) but of an age (2 years) contemporaneous with the court docket. The *Link* case was a pre-trial not requiring the mental and physical demands of an actual trial. Link's counsel was physically capable of accommodating the Court and had no real excuse not to be present. Edsall's counsel had scrupulously complied with all the requirements of procedure until incapacitated by illness.

The Court in *Link* aptly stated the rule applying to the instant case at page 741:

> *"Finally this is not a case in which failure to comply with a court order 'was due to inability fostered neither by . . . [petitioner's] (Respondent's) own conduct nor by circumstances within its (his) control.' Societe Internationale Pour Participations Industrielles et Commerciales, S/A v. Rogers,* 357 U.S. 197, 211, 2 L. Ed. 2d 1255, 1267." (Emphasis added).

In *Pond v. Braniff Airways, Inc.,* 453 F.2d 347 (5th Cir. 1972), plaintiff on July 20, 1970 was given notice of her right to sue within thirty days Braniff for employment discrimination. On April 14, 1971 the Court by pretrial notice directed counsel for Pond to prepare and submit a proposed pre-trial order, jury instructions and proposed findings of fact and conclusions of law. Pond's counsel failed to comply. When the attorneys appeared for trial, the court *dismissed the complaint without prejudice.* The dismissal barred litigation on the merits since time for filing had expired.

On reversal, the Court said that the *dismissal was an abuse of discretion* as the effect was to bar litigation on the merits of the case as the time for filing had expired and plaintiff was not a participant in the fault (p. 348).

Favorably in accord with the instant case and strongly in support of Respondent, Edsall's contention. As in Pond, there was no inadvertence on the part of Edsall's counsel but a clear and apparent reason not to dismiss on notice of counsel's illness. Similarly, the time had expired on one of Edsall's causes which cause of action was an integral part of the entire law suit.

Berardi v. The Pure Oil Corporation, 456 F.2d 98 (6th Cir. 1972), concerns appellant's failure to amend his complaint in accordance with the Court's previous order and the resultant dismissal for such failure. The Appellate Court opined that it was hard-pressed to find an abuse of dis-

cretion in the dismissal but "do so only because we believe the interests of justice require that Appellant be afforded one more opportunity to conform their pleadings to the Court's Orders."

Unquestionably in accord with Edsall and is consistent with the Sixth Circuit's decisions on abuse of discretion where "interests of justice" are to be first served.

Theilmann, Admr. v. Rutland Hospital Inc., 455 F.2d 853 (2d Cir. 1972), involves an appeal from a dismissal of suit for medical malpractice with prejudice for failure to prosecute. Plaintiff retained Bloomers in Rutland and later also retained attorney Schulman from New York. Bloomers sent Schulman the file and notice that the case was on the calendar. Schulman requested a continuance to the middle of June, 1971. On April 30, 1971, Schulman left for Spain and returned May 11, 1971. Vigers requested postponement to September and the request was denied. Case called for May 17, 1971 and jury impaneled. Bloomers conducted voir dire and trial set for next day. The Court ordered Bloomers to start case with Schulman and Vigers taking over on May 19, 1971. On May 19, Schulman appeared and argued that the case was not ready for trial and requested continuance. The Court denied continuance and Schulman stated that he could not proceed. The Court granted the Motion to Dismiss.

Not similar to instant case as Theilmann had counsel that were familiar with the case since date of filing in March, 1969. Bloomers was present as were Schulman and Vigers all physically well and capable of assisting in the trial. Schulman's unpreparedness was a result of his vacation without leave of Court.

In the case at bar, Respondent's inability to proceed was occasioned by the illness of sole counsel. No other attorney was familiar with his case. The Court had been

duly notified and the Court's Order of July 21, 1972 recognized counsel's incapacitation.

Sloup v. Hershey, 457 F.2d 148 (7th Cir. 1971), concerns a third year law student seeking an order in the nature of Mandamus to cancel an induction order, reopen his 1-a classification, reclassify him 1-S(C) and enjoin all defendants. Before hearing, the induction order was indefinitely postponed. In an ex parte proceeding, the injunction was denied with plaintiff agreeing that the matter might be administratively resolved. The Court ordered the case removed from the active calendar with leave to reinstate the suit within ninety (90) days. The 90 day period expired and plaintiff finished law school in June of 1970. On October 22, 1970, plaintiff was ordered to report for induction. On Nov. 9, 1970 he moved for reinstatement of his case and to enjoin the induction. The Court dismissed for want of prosecution. Appeals Court Affirmed.

Not similar to the instant case. Sloup agreed to the 90 day continuance. Classification 1-S(C) is a student deferment. He graduated before being ordered for induction. His purpose was accomplished (p. 150).

Respondent, Edsall, was afforded no such consideration although he had a greater stake in his day in Court on the merits of his suit. The purpose of his case had not been served before dismissal. He was prepared for trial but could not proceed without counsel.

In *Bautista v. Concentrated Employment Program of the Department of Labor et al.,* 459 F.2d 1019 (9th Cir. 1972), Appellant filed a Complaint on July 3, 1968 which was dismissed with leave to amend by September 25, 1969. The Appellees filed Interrogatories May 19, 1970. Litigation halted until March 4, 1971 when the Clerk pursuant to Local Rule notified the parties to appear on April 25th to show cause why the case should not be dismissed for

want of prosecution. Appellant did not respond to the Show Cause Order. On May 1, 1971 Appellant answered Appellees Interrogatories. Two weeks later Appellant served Interrogatories. At hearing on July 25, 1971, case was dismissed.

Not similar to the case at bar as all of the delays, except for the illness of Respondent's counsel, were occasioned by the Petitioner.

Importantly, Appellant, Bautista, was given an opportunity to explain why the case should not be dismissed. Such an opportunity to show cause was not afforded the Respondent in the instant case. The *Bautista* case was over three years old.

The cases of *Pond* and *Berardi, supra,* and Edsall, the instant case, are uniform in the application of law that the lower Court should be reversed "in the interest of justice" from the resulting abuse of discretion by the Trial Court.

While in *Theilmann, Sloup, Bautista* and *Link, supra,* the issue of "abuse of discretion" may have been raised or inferred, the cases are in harmony upon their independent facts and the application of the law and are not in discord with *Pond, Berardi* or Edsall, *supra.*

In *Theilmann, Sloup, Bautista* and *Link,* the abuse in each case resulted from the dilatoriness or neglect in claimants' Counsel's failure to comply with procedural requirements preparatory to the trial of their cases after considerable indulgence by the Courts which extended over a period of years.

On the independent facts of each case and the application of the law, *Theilmann, Sloup, Bautista* and *Link* are uniform and harmonious with *Pond, Berardi* and Edsall and no conflict exists in the decisions between the enumerated Circuit Courts.

Decisions of This Court and Its Inferior Courts Support the Challenged Judgment

The decisions cited by the Petitioner support the contentions of the Respondent that the Trial Court committed an abuse of discretion in ordering the replacement of counsel or dismissal of the lawsuit if Respondent was unable to proceed on September 5, 1972 because of counsel's illness and, particularly, where the time allotted was insufficient to find new counsel and permit him the opportunity to become familiar with the intricacies of the case.

No latitude for a further continuance was given Respondent even though the circumstance giving rise to the matter warranted such consideration. This strict approach put Respondent in the extremely unjust situation of finding at his peril new counsel or face dismissal if his counsel who had spent two years developing the case was not well by the trial date.

Under the rather strained circumstances of *Hunter v. Fairfax's Devisee,* 3 (U.S. Reports) Dallas 305 (1796), where the plaintiff-in-error had previously obtained a postponement of the trial for one term and was now seeking a continuance for another term (death of counsel), the Court in adopting a liberal approach to the request by letter to extend the trial date said: "In all questions of this nature, we must be governed by a sound discretion; in order to prevent on the one hand, an unnecessary procrastination, and on the other hand, to avoid an injurious precipitation of trials.", and found that the magnitude of the case dictated that replacement counsel should have the opportunity to investigate the principles and to consider the authorities connected with it, out of term, and unencumbered by the pressures of current business of the Court.

Respondent's claim is complex and intricate since the factual situation is unique from that of any other F.E.L.A. case reported and the medical foundation of the case is unusual in that it necessitates the developement of causal relations between the blow on the head and the subsequent heart attack.

Other Federal Courts have uniformly followed the rule as announced in *Hunter v. Fairfax, supra,* in respects to illness of counsel.

The case of *Rankin v. Shayne Brothers, Inc.,* 280 F. 2d 55 (C.A. Dist. Col. Cir. 1960), concerns the abuse of discretion by the District Court in dismissing an action of plaintiff, pending about four years, upon circumstances including the illness and incapacitation of counsel which necessitated temporarily the discontinuance of his practice.

While in *Foxboro Company v. Fischer & Porter Company,* 29 F.R.D. 522 (U.S.D.C., E.D. Pa.) 1961, the Court refused in a case pending over three years to dismiss where the defendant was largely responsible for the delay.

Other decisions:

Nowaczyk v. Welch (Ill. 1969), 245 N.E.2d 894, 896, 897 where counsel for plaintiff became ill and could not go forward with the case. On appeal the Court reversed as the dismissal for want of prosecution was an abuse of discretion since counsel was in no physical condition to try the case and that illness was ample grounds to postpone the trial. *Thompson v. Hays,* 45 S.E. 970, wherein sole counsel for the defendant stated that he was too unwell to attend to any business and could not go to trial, it was error not to grant the continuance. *Courtney v. Central Trust Co.* (Supreme Ct. Fla. 1933), 150 So. 276, defendant counsel's wife was seriously ill and he was

not in any fit mental state to try the case. The cause was tried by a replacement attorney and the judgment was against the defendant. The Supreme Court on a finding of abuse of discretion reversed and ordered a new trial stating, "when a trial judge perceives that in consequence of inadvertence of counsel, or other cause, the rigid enforcement of rules of procedure would defeat the great object for which they were established, it is the duty to so relax them (when it can be done without injustice to any) as to make them subserve their true purpose, which is to promote the true administration of justice.", and further stating that sole counsel should be afforded every opportunity to try the case as clients rely on the particular skills attorneys are supposed to possess.

In *Baillio v. Wilson* (La. 1827), 6 Martin Reports N. S. 334, 335, reversing judgment for refusal to grant a continuance on the ground of sickness of her leading, and, indeed, only attorney and that the sickness and consequent incapacity of counsel is good ground for allowing it and *Marrero, et al. v. Nunez, et al.* (1848), 3 La. Ann. 54, continuance should be granted in the furtherance of justice when unforeseen illness of counsel occurs and the case is a complicated one which counsel had sole control for many years and previous delays were not imputable to the attorney of the plaintiff.

CONCLUSION

The Writ should be denied.

Respectfully submitted,

JOHN RUFFALO
510 Mahoning Bank Building
Youngstown, Ohio 44503
Attorney for Respondent

APPENDIX

DOCKET ENTRIES OF THE DISTRICT COURT

IN THE DISTRICT COURT OF THE UNITED STATES
For The Northern District of Ohio, Eastern Division

Civil Action No. C 70-594

DOCKET ENTRIES

1970

June 25. Complaint filed.

June 25. Summons issued. Copy of summons to the Marshal.

July 27. Stipulation and Order granting deft. leave to move or answer until 8/28/70 filed. Thomas, J. Notice waived. (Docketed 7/27/70)

July 28. Summons returned and filed. Served 7-8-70. $3.00 (pd)

Aug. 28. Stipulation and Order granting deft. leave to move or answer until 9/28/70 filed. Kalbfleisch, J. Notice waived. (Docketed 8/28/70)

Sept. 28. Answer of deft. filed. Copy mailed 9/28/70

Oct. 28. Request for trial filed.

1971

July 2. Interrogatories Propounded by Pltf filed. Copy mailed 7/1/71 (6)

Aug. 2. Motion of deft. for leave to answer or object to interr. with affidavit in support filed. Copy mailed 8/2/71

1971

Aug. 11. Endorsed order granting Motion of Deft for leave 30 days in which to answer or object Pltf's Interrogatories filed Krupansky, J. Copies to Skulina & Ruffalo. (Docketed 8/12/71)

Sept. 10 Mo. of deft. for leave to answer or object to pltf's interr. by 10/1/71 filed. Copy mailed 9/9/71.

Sept. 20. Endorsed order granting mo. of deft. for leave to answer or object to interr. by 10/1/71 and stating no further leaves will be allowed, Krupansky, J. Copies to Ruffalo & Skulina. (Docketed 9/20/71)

Oct. 1. Answers of deft. to Interrogatories filed. Copy mailed 10/1/71.

1972

July 5. Minutes of pre-trial proceedings filed, Krupansky, J. (Trial 7/27)

July 5. Pre-trial order filed, Krupansky, J. Copies to Ruffalo and Skulina. (Docketed 7/5/72)

July 11. Interrogatories by Deft to be answered by Pltf filed. Copy mailed 7/11/72

July 19. Motion of Deft. Penn Central for production of documents and for Protective Order with memorandum in support of Motion filed. Copy mailed 7/19/72.

July 21. Order continuing trial to 9/5/72; no add. continuance will be granted; further that replacement counsel will be prepared to proceed at trial if atty. Ruffalo cannot; further that mo. of deft. for prod. of docu. is granted and said documents will be produced by not later than 7/27/72 filed, Krupansky, J. Copies to Ruffalo and Skulina. (Docketed 7/24/72)

July 26. Brief of Pltf in opposition to Deft's Motion for production and Protective Order filed. Copy mailed 7/25/72.

1972

July 28. Motion of Pltf for reconsideration and to vacate Order with Memorandum in support of Motion and Exhibit "A" filed. Copy mailed 7/27/72.

Aug. 10. Reply of Deft. Penn Central to Pltf's Motion for Reconsideration & Request to vacate Court's Order filed. Copy mailed 8/10/72.

Aug. 14. Answers of Pltf to interrogatories propounded by Deft filed. Copys mailed 8/14/72.

Aug. 18. Order denying Pltf's Motion for reconsideration & to Vacate filed. Krupansky, J. Copies to Skulina and Ruffalo. (Docketed 8/21/72)

Aug. 29. Notice of Appeal by Pltf filed. Copies by Clerk to Dolan and Ruffalo.

Aug. 29. Bond for costs filed. (Ohio Farmers Insurance Co.)

Sept. 6. Order dismissing case without prejudice for want of prosecution at plaintiff's costs filed. Krupansky, J. Copy to Ruffalo & Skulina. (Docketed 9/7/72)

Sept. 28. Certified original pleadings mailed to the Clerk for the Court of Appeals for the Sixth Circuit.

Oct. 10. Certified record received in U.S.C.A. & filed. 10/6/72 #72-1995.

Oct. 6. Notice of Appeal by Pltf filed.

Oct. 6. Bond for costs filed.

Dec. 7. Certified Supplemental Pleadings Nos. 23 & 24 mailed to the Clerk for the U.S.C.A. for the Sixth Circuit.

PHYSICIAN'S LETTER

JOHN N. McCANN, M.D.
2710 Mahoning Avenue
Youngstown, Ohio 44509

Phone 799-1507

July 19, 1972

To Whom It May Concern:

After physical examination of Mr. John Ruffalo - his condition requires the consultation of a specealist and I have advised him to cease activities for a period of 1 month. His physical condition will be reevaluated in 4 weeks.

/s/ John N. McCann M.D.

MOTION FILED IN COURT OF APPEALS

(Filed October 30, 1972)

Case No. 72-1995

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

LEONARD L. EDSALL,
Appellant,

vs.

PENN CENTRAL TRANSPORTATION COMPANY,
Appellee.

MOTION FOR ENLARGEMENT OF TIME

1. The Appellant hereby respectfully moves the Court for an extension of time within which to file his Brief and Appendix for the following reasons:

That Counsel for Plaintiff-Appellant has been ill for some period of time and is on the 29th day of October, 1972 being admitted to a hospital for an operation. Counsel for the Appellant says that he will be incapacitated for a period of about six weeks and will need additional time in which to prepare his Brief and Appendix.

2. Therefore, Appellant respectfully requests that the time in which he is required to submit his Brief, Appendix or other documents and things be extended to and including December 31, 1972.

/s/ JOHN RUFFALO
Attorney for Appellant

Final extension to 12/15/72 granted. Entered by the Clerk pursuant to Rule (4F) Sixth Cir. Rules.

/s/ JAMES A. HIGGINS
Clerk